

Title Appeal No. 36 of 2012

Order No.62  
dated 10.09.18

Today is fixed for passing Order.

Record is taken up for passing Order.

By filing a petition under Order 22 Rule 10 read with Section 151 of CPC, the petitioners have prayed for adding them as party defendants in the suit and also in the Title Appeal on the ground that they have purchased the suit property from the original defendant No.1 namely Arati Das, since deceased, as now represented by her legal heirs being defendant Nos.2 & 3 by a registered deed of transfer dated 05.04.2013. They have come to know about the suit in the month of 2018 and thereafter on enquiry they have gathered the particulars of the suit as well as the Title Appeal.

No written objection has been filed against the said petition.

Another application has been filed under Order 1 Rule 10 read with 151 of CPC filed by the Appellant with the same prayer of adding Birendra Kumar Chopra and Ravindra Kumar Chopra as Respondent in the present Appeal.

Respondent No.3 has filed written objection with a prayer for rejection of the application on the ground that nothing has taken place during the pendency of the suit and as such, they cannot be added as party respondents and if any transaction has been made by Arati Das during her life time in favour of the alleged two persons who were not party in the suit. They cannot be added as party in the instant Appeal. If they are added party then the respondent will be highly prejudiced and there will be change in the nature and character of the suit.

Perused the materials of the record and the applications and objections.

It appears that the instant Appeal has been preferred against the Judgment and Decree passed by the Ld Court below in Title Suit No.205 of 2010 on 24.04.2012. The suit property was transferred by Arati Das on 05.04.15 ie after passing of the Judgment. Until and unless the Judgment is set aside it subsists. Therefore, the transaction which had taken place is not illegal. As such, these two petitioners namely Ravindra Kumar Chopra and Birendra Kumar Chopra are necessary parties in the present Appeal which is the continuation of the suit.

Under the circumstances, both the petitions are allowed.

Ravindra Kumar Chopra and Birendra Kumar Chopra be added as respondent No.4 & 5 in the present Appeal. Amend the cause title to that effect and note in the

District North 24 Parganas.

In the Court of 2d. Jrd. A.D. at Barasat.

T.A. 36/12

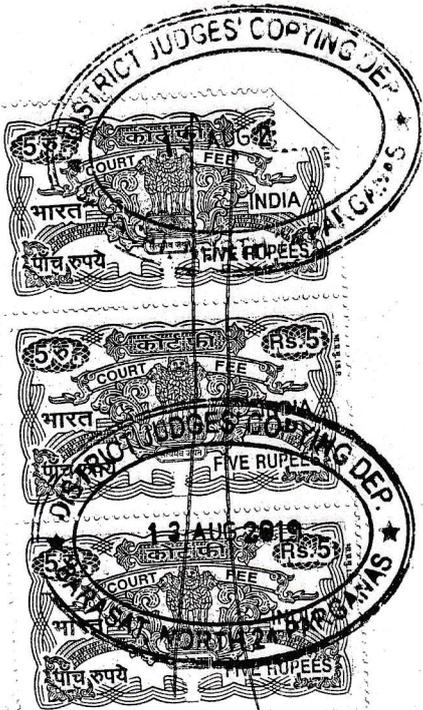
Tapan Kumar Das

- vs -

Amit Das S/o.

Petition NO. X11146 / Dated - 08/8/19

Assessment - 13/8/19

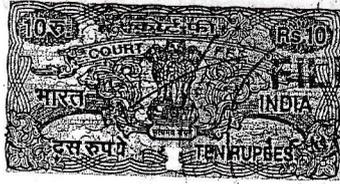


C-156

Checked by



Date of application for copy..... 08/08/19  
1. Date Fixed for notifying the  
requisites..... 13/08/19  
2. Date of delivery of the  
requisites..... 13/08/19  
3. Date on which the copy was  
ready for delivery..... 13/08/19  
4. Date of receipt over the copy  
to the applicant..... 13/08/19  
5. Costs of copy..... 215/-  
6. Number of the Xerox sheets 1+4 = 5 sheets  
R



11140  
W.O. 4-5  
Filed By  
TARAK MUKHERJEE  
Advocate

9/4  
DISTRICT : NORTH 24 PARGANAS

In the 3rd Court of Ld. Adl. District Judge at Barasat

Ref : T.A. No. 36/2012

Arising out of T.S. No. 205/2010

Tarun Kumar Das ... Appellant

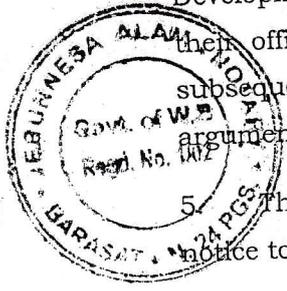
- Versus -

Sri Amit Das and others ... Respondents

WRITTEN OBJECTION ON BEHALF OF APPELLANT AGAINST THE PETITION  
FILED BY THE RESPONDENT NOS. 4 AND 5 UNDER ORDER 39 RULES 4  
READ WITH SECTION 151 OF C.P. CODE

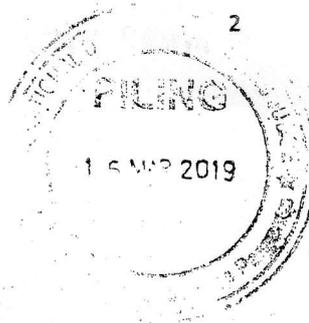
Most Respectfully Sheweth :-

1. That the appellant/plaintiff appeal as well as injunction petition is not maintainable in its present form and in law.
2. That the appellant filed the original title suit being No. 205 of 2010 before the Ld. Court below for declaration and injunction with prayers made thereon in the plaint.
3. That in the present appeal Ld. District Judge, North 24 Pgs. was pleased to pass an ad interim order of injunction dated 05.06.2012 against the then respondent nos. 1 to 3 and this transferee court was subsequently pleased to extend the said ad interim order of injunction till disposal of the present appeal vide order dated 15.03.2014.
4. That the plaintiff/ appellant himself informed regarding the injunction order passed by the Ld. District Judge's court and by this Ld. Court to the Urban Development Department, Salt Lake City, Govt. of West Bengal in writing on 13.09.2010 and 22.03.2013 and said Urban Development Department call upon the plaintiff/ appellant on hearing at their office which was attended by the appellant on 14.09.2010 and subsequently on 27.09.2010 the appellant also appeared and advanced argument with brief notes of arguments.
5. That subsequently on 05.09.2013 the appellant also served legal notice to the Urban Development Department on 05.09.2013.



Checked by



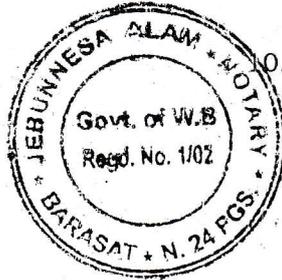


*Chandra MA Das*

Filed By

TARAK MUKHERJEE  
Advocate

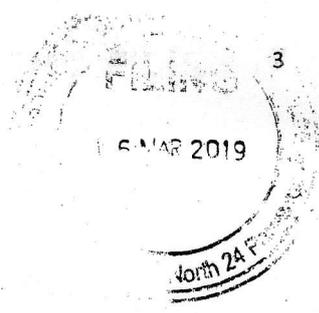
6. That in the meantime Amit Kumar Das and Smt. Anjana Chanda both son and daughter of Arati Das gifted their share over the suit property by way of two separate registered deed of gift being nos. 3597 and 3596 both of 2010 being registered before D.S.R.-II which has been came to the knowledge of this appellant/ plaintiff on 01.08.2017 after getting certified copy of those deeds after having information in the last part of July, 2017.
7. That said transfers by Amit Kumar Das and Anjana Chanda were during the litigation of the instant proceedings but neither of the parties have informed this appellant or to this Ld. Court about said transfers in the meantime.
8. That when Arati Das went to mutate her name before the Urban Development Department in respect of the suit property the Urban Development Department stated to her that the mutation is dependent upon the result of the title suit no. 205/2010.
9. That this plaintiff/ appellant also got information that during pendency of this proceedings said Arati Das transferred the lease in respect of the suit property by executing a deed of assignment dated 05.04.2013 in favour of 1) Sri Rabindra Kumar Chopra and 2) Sri Birendra Kumar Chopra details of which mentioned below by way of a registered Deed of Transfer of Lease/ Deed of Assignment being no. 01096 registered before ADSRO, Bidhannagar, North 24 Pgs. for the year 2013 in which Governor of West Bengal also made party.



10. That all those transfers are illegal, arbitrary and not binding upon the plaintiff and accordingly the following persons as well as Departments are the necessary parties to be added as defendants/ respondents in the original suit as well as in the instant appeal for proper adjudication of the instant suit in

Checked by





Handwritten signature

Filed By  
TARAK MUKHERJEE  
Advocate

these changed circumstances otherwise your plaintiff/ appellants will suffer irreparable loss and injury which cannot be compensated by money value.

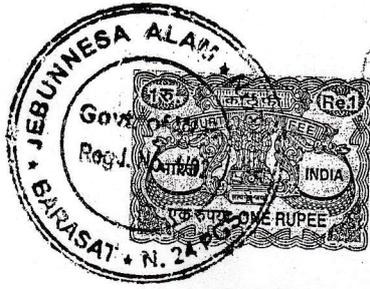
- 11. That in the meantime said Anjana Chanda, the daughter of Arati Das, the deceased defendant/ respondent has filed a petition supporting the appellant/ plaintiff.
- 12. That the added respondent nos. 4 and 5 all on a sudden filed the petition now under objection which is most illegal, baseless and under misconception of law as the original defendants/ respondents never made such petition and now the present added respondent nos. 4 and 5 came into the picture by way of illegal transfer of the suit property while the order of injunction was still in force and well within the knowledge of the respondents.
- 13. That the present added respondent nos. 4 and 5 have no leg of their own to stand in the subject matter of the instant suit/appeal though they have to stand on the legs of the original respondent nos. 1 to 3 and it is to mention here that the appellant in the meantime filed Misc. Case u/o 39 rule 2a read with Sec. 151 C.P.C. being no. Misc. Case 125/18 in this regard on 15.05.2018 which is also pending for disposal.
- 14. That in the petition filed by the added respondent nos. 4 and 5 under Order 39 Rule 4 read with section 151 of C.P. Code, they have admitted the entire facts regarding injunction order passed in the instant appeal and accordingly the petition now under objection is not at all maintainable and liable to be rejected with exemplary cost.

Hence, it is prayed that Your Honour would graciously be pleased to reject the petition filed by the added respondent nos. 4 and 5 under Order 39 Rule 4 read with section 151 of C.P. Code with exemplary cost.



Checked by





N.R.SL. NO. 9350

Date 16 MAR 2019

BEFORE THE NOTARY PUBLIC  
BARASAT, NORTH 24 PARGANAS

**AFFIDAVIT**

I, Tarun Kumar Das, S/o. Late Santi Ranjan Das, aged about 63 years, by faith : Hindu, by occupation : Business and residing at EE/13/8, Salt Lake City, Sector-II, District : North 24 Parganas, Kolkata- 700 091, P.S. Bidhannagar (East), do hereby solemnly affirm and declare as follows :-

1. That I am the appellant/plaintiff of the instant appeal and am well conversant with the facts and circumstances of the same.
2. That the statements as made in paras 1 to 14 of this written objection are true to my knowledge and the rest are my respectful submission before this Ld. Court.

*Tarun Kumar Das*

Signature of the deponent,

Identified by me :

*Devala Mukherjee*

Advocate

Solemnly affirmed on 16/3/19  
by the party being duly identified by  
Advocate Devala Mukherjee  
This document contains four  
pages and is checked by

*[Signature]*  
Notary Clerk

*Dee 16 19*  
*(Debunnesa Alam)*  
Notary Public, Barasat  
North 24 Pgs., REGN No. 1/02

16 MAR 2019

Checked by



Compared and found to be true  
copy and correctly stamped

*Sina Saha* 13/08/19  
Comparing Clerk  
District Judges Court  
North 24 Parganas, Barasat

Certified to be true copy  
*Sudhain Biswas*  
Head Comparing Clerk  
District Judges Civil Copying Dept.  
North 24 Parganas, Barasat  
13/08/19